

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

MICHAEL BUTLER, et al.,	:	
	:	
Plaintiff	:	
	:	
v.	:	5:06-CV-405 (WDO)
	:	
EXPRESS FINANCIAL SERVICES, INC.,	:	
	:	
Defendant	:	

ORDER

This matter is before the Court on a dispute between the parties over the responses due to various pleadings. After Defendants removed the case to this Court, Defendants filed a motion to dismiss. Plaintiffs thereafter filed a First Amended Complaint. The parties now dispute whether the Plaintiffs must respond to the motion to dismiss, whether the motion to dismiss should be amended and whether Plaintiffs were permitted to file an amended complaint after the motion to dismiss was filed. Defendant contends the motion to dismiss was its “responsive pleading” and thus leave of court, or consent by the Defendant, was required before the complaint could be amended. However, in this circuit, motions to dismiss do not constitute “responsive pleadings” for purposes of Rule 15. See Williams v. Board of Regents of University System of Georgia, 441 F.3d 1287, 1296 (11th Cir. 2006). Accordingly, Plaintiffs were permitted by Rule 15 to file the amended complaint. Defendant’s first motion to dismiss is DISMISSED AS MOOT and Defendant may file an amended motion to dismiss that pertains to the matters in the First Amended Complaint.

Defendant shall file said motion by no later than February 23, 2007. The customary 20-day response and 10-day reply periods shall apply.

SO ORDERED this 23rd day of January, 2007.

**S/
WILBUR D. OWENS, JR.
UNITED STATES DISTRICT JUDGE**